



Office of the Attorney General

State of Texas

September 21, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Glen Grunberger
Staff Attorney, Legal Division
Texas Water Commission
P. O. Box 13087
Austin, Texas 78711-3087

OR92-553

Dear Mr. Grunberger:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17100.

The Texas Water Commission (the "commission") has received a request for "any and all documentation regarding the Atochem North America, Inc., Site" in Bryan, Texas, including, "all correspondence that you have related to the Cotton Poisons, Pennsylvania Salt Manufacturing Co., Pennsalt Chemical Corp., Pennsalt Corp.," and "the name(s) of the personnel that have a file related to the site." You advise us that some of the requested information was the subject of a previous determination of this office and do not request a determination regarding its availability. You claim that additional information not addressed by the previous determination is excepted from required public disclosure by sections 3(a)(1) and 3(a)(3) of the Open Records Act.

Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). The litigation exception may be applied to records relating to a contested case before an administrative agency subject to the Administrative Procedure and Texas Register Act (APTRA), V.T.C.S. article 6252-13a. Open Records Decision Nos. 588 (1991); 368 (1983).

You advise us that the commission has commenced a contested enforcement proceeding against Atochem North America based on contamination found at the site. See Texas Water Code art. 5.117. Enforcement hearings before the commission are conducted pursuant to APTRA. 31 T.A.C. § 337.31. Accordingly, we conclude that litigation is pending. You indicate that the attorney representing the commission has determined that the requested documents relate to the litigation. We agree. Therefore, the requested information may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act. Please note that this ruling applies only until the resolution of the matter and to the documents at issue here. As we resolve this matter under section 3(a)(3), we need not address the applicability of section 3(a)(1) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-553.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/GCK/lmm

Ref.: ID# 17100
ID# 17122

cc: Mr. Douglas McAlister
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